



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI- 174875

PRELIMINARY RECITALS

On June 7, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to challenge a decision by the Fond Du Lac County Department of Social Services regarding Medical Assistance (MA). The hearing was held on July 5, 2016, by telephone.

The issue for determination is whether the petitioner's appeal of this medical tax intercept is timely.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services

[REDACTED]

Fond Du Lac County Department of
Social Services
50 N Portland St
Fond Du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County. The petitioner was the only person in his household.
2. On March 6, 2014 the agency sent the petitioner a notice stating that he would receive BadgerCare (BC) Plus benefits effective April 1, 2014. The notice also stated that if the household's total monthly income (before taxes) went over \$972.50, the household had until the 10th day of the following month to report the increase in income.

3. The petitioner received BadgerCare (BC) Plus benefits from April 1, 2014 to February 29, 2015.
4. In April 2014 the petitioner began working for [REDACTED]. His monthly gross income in April 2014 was \$1,040. This exceeded the reporting requirement. The petitioner never reported this employment to the agency.
5. From April 2014 through February 2015 the petitioner's monthly income was as follows:
 - a. April 2014 - \$1,040
 - b. May 2014 - \$1,976
 - c. June 2014 - \$3,168.58
 - d. July 2014 - \$2,117.35
 - e. August 2014 - \$2,247.23
 - f. September 2014 - \$2,110.78
 - g. October 2014 - \$2,110.78
 - h. November 2014 - \$3,132.93
 - i. December 2014 - \$2,256.27
 - j. January 2015 - \$2,099.69
 - k. February 2015 - \$2,105.15
6. In January 2015 the agency learned of the petitioner's employment through a State Wage Match. The agency verified the petitioner's income through his employer.
7. On March 16, 2015 the agency sent the petitioner a notice of overpayment stating that he was overpaid \$2,628.51 in BC Plus benefits from June 1, 2014 through February 28, 2015. The notice further stated that the petitioner had a right to a fair hearing, and that he had 45 days to request a hearing.
8. The petitioner never requested a fair hearing regarding the overpayment.
9. On March 16, 2015 the agency sent the petitioner a Repayment Agreement.
10. The agency sent the petitioner dunning notices on May 4, 2015, June 2, 2015, and July 2, 2015.
11. In June 2015 the petitioner requested a Fair Hearing form. The agency sent him a fair hearing form on June 15, 2015. The petitioner did not request a fair hearing at that time.
12. The petitioner never made any payments toward the overpayment.
13. On December 11, 2015 the agency sent the petitioner a notice stating that they may intercept his tax return to cover the \$2,628.51 owing on the overpayment. The notice specifically stated that the petitioner had 30 days to appeal the tax intercept.
14. On June 9, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Department may intercept a recipient's state income tax refund to recover an overpayment of medical assistance. See § 49.85. The Department of Health Services must certify any amount of benefits it is entitled to recover to the Department of Revenue at least once a year. Wis. Stat. § 49.85(2)(a). The Department seeks to intercept the petitioner's taxes to recover \$2,628.51 in BC Plus benefits he received

from April 1, 2014, though February 28, 2015. The basis of the claim is that the petitioner began a job, and never reported the increase in income to the agency. The petitioner claims that he is not responsible for the overpayment because he called the number on the back of his forward health card to cancel his BC Plus benefits.

The county agency has already prevailed in an overpayment claim it brought under Wis. Stat. § 49.497 against the petitioner because he never appealed it. The overpayment notice sent in March 2015 informed the petitioner that he had 45 days to request a fair hearing or appeal. The petitioner did not appeal until more than a year after this 45 day time limit.

Having prevailed on the overpayment, the agency sent the petitioner a repayment agreement and three dunning notices. The agency then sent the petitioner a notice of tax intercept action against him on December 11, 2015. This notice informed him that he had 30 days to appeal the tax intercept. He did not appeal this tax intercept within this 30 day time limit.

All of the notices were sent to the petitioner's current address. The petitioner agrees that he received these notices.

The scope of the hearing can be limited to matters the petitioner has not had a previous chance to appeal. Wis. Stat. § 49.85(4)(a). He has had plenty of chances to appeal and has not done so, thus I have no jurisdiction to address the tax intercept or the overpayment. I further note that even if the petitioner had appealed the tax intercept timely, I could not have addressed the overpayment, as he would have had a prior chance to appeal the overpayment.

But even if I consider the evidence he submitted concerning the overpayment, he will lose. The petitioner argues that he canceled BC Plus by calling the number on the back of his forward health card. He further argues that [REDACTED] billed BC Plus incorrectly for some his medications. He states that [REDACTED] used BC Plus as a primary rather than a secondary insurance.

I do not believe that the petitioner tried to cancel his BC Plus insurance. The petitioner stated that he has phone records showing he called the phone number on the back of his forward health care. He attempted to get the phone records during the open record period, however, his phone carrier had to mail the records. The records were not submitted during the open record period. I will assume that these records show what the petitioner purports, that he called the number of the back of his forward health card. Even in the light most favorable to the petitioner, the records do not show the content of his conversation with forward health. Forward health is not the agency that cancels BC Plus coverage. Forward health would have told the petitioner that he had to contact the agency. The petitioner never contacted the agency to cancel his BC Plus insurance.

The petitioner next argues that [REDACTED] billed BC Plus incorrectly. He states that BC Plus should have been a secondary insurance. BC Plus paid [REDACTED] as a primary. This amount is included in the amount of the overpayment. The problem with this argument is two-fold. One, he was never entitled to use BC Plus as a secondary insurance. Second, BC Plus would have paid out as a primary insurance because the petitioner never told BC Plus about his job and insurance through his job.

Regardless, these issues are moot. The petitioner had until May 1, 2015 to appeal the underlying overpayment. He did not file an appeal until June 2016. This is well beyond the time limit to appeal the overpayment, and thus I am without jurisdiction to address the overpayment.

CONCLUSIONS OF LAW

The petitioner's appeal of this medical tax intercept is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

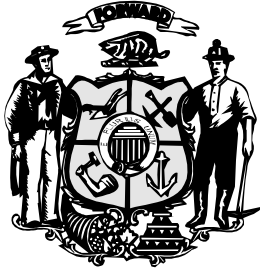
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of July, 2016

\s _____
Corinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 12, 2016.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability